IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No.3813 of 2006
Date of decision: March 2,2007

M/s.New India Assurance Company Limited

V.

State of Haryana and others

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri R.K.Bashamboo, Advocate, for the appellant.

Viney Mittal,J.

Plaintiff No.2, M/s. New India Assurance Company Limited, is the appellant before this court in second appeal.

A suit for recovery of Rs.15,32,520/- was filed by plaintiff No.1, Dena Bank and plaintiff No.2, New India Assurance Company Limited. The said suit was filed against State of Haryana, the Director, Haryana State Lotteries and State Bank of India. It was pleaded by the plaintiffs that plaintiff-Bank was insured under the Bankers Indemnity Insurance Policy with plaintiff No.2 for the period April 1,1994 till March 31,1995. A fraud was detected later on and on that basis, plaintiff, Dena Bank, lodged a complaint under the aforesaid policy with the plaintiff-Insurance Company. The said claim was approved and a sum of Rs.7,23,950/- stood paid on June 17,1997 by the Insurance Company to Dena Bank. The Insurance Company claimed that it was entitled to recover the said amount from the defendants along with interest.

The plaintiffs elaborated that four drafts dated March 16,1994 for a sum of Rs.3,10,800/-, Rs.1,56,000/-, Rs.1,12,200/- and

Rs.3,12,200/- totalling Rs.8,91,000/- were presented on April 7,1994 through clearing by defendant No.3, State Bank of India, in the account of defendant No.2. The said drafts were drawn on Dena Bank and were purported to have been issued by its Aligrah Branch. Since no apparent discrepancy was found, therefore, all the said drafts were cleared for payment by plaintiff No.1 on the same day. Later on confirmation from the Aligarh Branch, it was reported that the said drafts had not been issued drawn on Chandigarh Branch of Dena Bank but the said drafts were issued merely for a sum of Rs.105/-,Rs.110/, Rs.110/- and Rs.110/- in favour of different persons. The signatures of the Manager of Aligarh Branch were also found to be forged on the said drafts. Dena Bank contacted Insurance Company and it was learnt that the said drafts were sent by their Delhi Sales Office. The Director of Haryana State Lotteries assured Dena Bank that it will cooperate for recovery of the money which was paid under mistake due to fraud. According to the plaintiff, the Bank even lodged an FIR but the mater had remained untraced. On that basis, the plaintiff-bank claimed recovery of Rs.8,91,000/- from the defendants which had been paid under mistake.

The suit was contested by the defendants. Two separate written statements were filed. Defendants No.1 and 2 maintained that 11 of the four drafts were presented by State Bank of India, defendant No.3 for collection from Dena Bank on April 5,1994 which were duly credited on April 9,1994 by Dena Bank after verifying the genuineness of the drafts in question. The said defendants maintained that it was duty of the Dena Bank to verify and tally the drafts amount from the issuing bank as the advice was available with the issuing branch before crediting the same in the account of

the defendants. It was further pleaded by the defendants that the department had presented the drafts received from the firm in lieu of tickets sold to them and the plaintiff should have recovered the amount from M/s. Jai Durga Agency.

Defendant No.3,State Bank of India, filed a separate written statement and it took similar objections. It was also pleaded that there was no provision to recover any liability of defendant No.3 who was merely acting in the capacity of collective banker.

On the basis of the evidence led by the parties, the trial court dismissed the suit filed by the plaintiffs.

Two separate appeals were filed by defendants before the appellate Court. The appellate Court reappraised the entire evidence. On such reappraisal, the appellate Court came to the conclusion that it was a fault on the part of Dena Bank officials which had led to encashment of drafts and had the officials of the plaintiff-Bank been careful, then they could have avoided the payment of the aforesaid amount to the defendants. On that basis, the statement of official who had appeared as a witness for the plaintiff-Bank was taken into consideration. It was noticed that there was an Inter Branch Reconciliation Department at Bombay of Dena Bank which reconciles all the matters/transactions between the branches throughout India. Consequently, it was held that since the plaintiff had failed to show that there was any undue enrichment on the part of the defendants and it was clear that loss suffered by the plaintiff was due to its own carelessness/negligence, therefore, the plaintiff had no claim to make against the defendants. Appeals filed by the plaintiffs were also dismissed.

Nothing has been shown that the findings recorded by the two Courts below suffer from any infirmity or are contrary to the

record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

March 2,2007 (Viney Mittal)
sks Judge